

Memorandum

Date: May 7, 2007

To: L. Ryan Broddrick, Director
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

From: Department of Water Resources

Subject: Reinitiation of Consultation of the Federal Biological Opinions on the Coordinated Operations of the Central Valley Project and the State Water Project and Memorandum of Understanding of Commitments to Expedite Consultation

Today, the Department of Water Resources (DWR) filed an appeal of the Alameda court order that called for a cessation of the SWP Harvey O. Banks Pumping Plant within 60 days of the order absent compliance with the California Endangered Species Act (CESA). The Alameda court order is automatically stayed pending the outcome of DWR's appeal. The plaintiffs in the Alameda court action filed on May 2, 2007 a "statement of non-opposition" to our request to stay the court order pending the resolution of the appeal. The stay will allow DWR to continue operation of its SWP pumping plant in the south Delta.

On April 26, 2007, federal district court Judge Oliver Wanger heard oral arguments regarding the United States Fish and Wildlife Service (USFWS) biological opinion on delta smelt for the long-term operations of the Central Valley Project (CVP) and State Water Project (SWP). The outcome of this litigation is uncertain and could have an effect on our request for a consistency determination.

DWR believes it is imperative to commit our agency's time and resources, in coordination with USFWS, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries), and U.S. Bureau of Reclamation (Reclamation), to expedite the completion of the reinitiated consultations on CVP and SWP operations. As you know, we have agreed to the attached Memorandum of Understanding (MOU) to establish that commitment.

Due to these developments, I am withdrawing the DWR April 9, 2007 request to you for a consistency determination as to whether the federal biological opinions¹ (the "existing biological opinions") and incidental take statements issued by the NOAA Fisheries and USFWS on the coordinated operations of the CVP and the

¹ The two federal opinions that are the subject of the April 9, 2007 request are the Biological Opinion on the Long-Term Central Valley Project and State Water Project Operations Criteria and Plan, ("salmon biological opinion" October 2004) and the Biological Opinion on the Reinitiation of Formal and Early Section 7 Endangered Species Consultation on the Coordinated Operations of the Central Valley Project and State Water Project and the Operational Criteria and Plan to Address Potential Critical Habitat Issues, ("delta smelt biological opinion" February 2005).

SWP and Operational Criteria and Plan (OCAP) are consistent with the California Endangered Species Act (CESA).

As you know, Reclamation and DWR, as an applicant under the Federal Endangered Species Act (ESA) for the existing biological opinions, have begun the reinitiated consultation with USFWS and NOAA Fisheries. Under the MOU, DWR has requested that DFG participate with DWR in its efforts to coordinate with the federal agencies so that the new opinions will be consistent with CESA regarding requirements for the SWP.

The biological assessment being prepared by DWR and Reclamation for the reinitiated consultation will include actions taken by DWR, including consideration of ongoing actions in the Pelagic Fish Action Plan. The analysis of the proposed action under reinitiated consultation will also consider new analysis of data and any new information resulting from studies on the decline of pelagic organisms in the Delta. DWR believes an updated biological assessment and resulting biological opinions will better describe measures that should be taken, including those taken through adaptive management, that avoid and minimize the take of listed fish and mitigate for impacts of the SWP on these fish. After the reinitiated consultation, DWR will submit a consistency determination request to you based on the new opinions and incidental take statements.

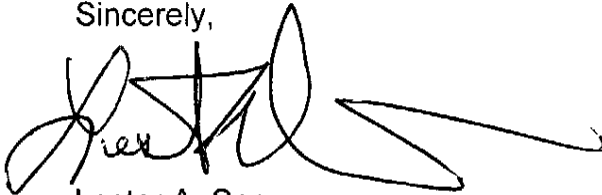
In recognition of the need for a reinitiated consultation of the federal opinions so that a request for a consistency determination may be made in the near future, DWR and DFG have made commitments in the MOU to achieve this goal. Such commitments include giving high priority to the reinitiated consultation and assigning the necessary staff and resources for the work required of our agencies, including assistance and coordination with the federal consulting agencies. In addition, until issuance of the new opinions, DWR will voluntarily commit to take actions that reduce impacts to delta smelt from SWP operations during the interim as described in the MOU. DWR believes that adaptively managed actions are an effective tool for protection of Delta fish, and during this interim period it will be important that the federal and state wildlife agencies continue to work together with DWR and Reclamation on such actions.

Finally, DWR remains committed to the successful completion of the Bay Delta Conservation Plan (BDCP) under the provisions of the State's Natural Community Conservation Planning Act and the federal Habitat Conservation Plan provisions of Section 10 of the ESA. The biological opinions and consistency determination that may result from the reinitiated consultation could provide necessary interim protection of listed species while the BDCP process is ongoing. Once the BDCP process is completed and appropriate environmental documentation is prepared, DWR anticipates that the BDCP will provide incidental take authorization of listed species for its Delta operations.

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I look forward to working with you and your staff and the federal agencies so we can expeditiously complete the reinitiated consultation on the delta smelt and salmonid biological opinions for the coordinated operations of the CVP and SWP in the Delta.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester A. Snow", with a long horizontal flourish extending to the right.

Lester A. Snow
Director

cc: (See attached list.)

Honorable Darrell Steinberg, Chair
Senate Natural Resources and Water Committee
State Capitol, Room 4035
Sacramento, California 95814

Honorable Bob Margett, Vice-Chair
Senate Natural Resources and Water Committee
State Capitol, Room 3082
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Honorable Lois Wolk, Chair
Assembly Water, Parks and Wildlife Committee
State Capitol, Room 6012
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Honorable Bill Maze, Vice-Chair
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